

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Class E Liquor License  
with Sunday Sales held by Starmac, Inc.  
and Richard P. Nelson d/b/a Champions  
Saloon & Eatery

**ORDER GRANTING IN PART  
AND DENYING IN PART  
RESPONDENTS' MOTION FOR  
SUMMARY DISPOSITION**

This matter is before Administrative Law Judge Jeanne M. Cochran on Respondents' Motion for Summary Disposition. Respondents filed their motion on July 1, 2013. The City of Minneapolis filed its brief in opposition on July 12, 2013. Respondents filed a reply memorandum on July 22, 2013. Oral argument on the motion was held on August 2, 2013 at the Office of Administrative Hearings in St. Paul, Minnesota. The motion hearing record closed on that date.

Edward T. Matthews, Matthews Law Office, PLLC, appeared on behalf of Starmac, Inc. and Richard P. Nelson d/b/a Champions Saloon & Eatery (Respondents). Joel M. Fussy, Assistant Minneapolis City Attorney, appeared on behalf of the City of Minneapolis (City).

Based on the submissions of the parties, the oral argument, and for the reasons set forth in the Memorandum attached hereto, the Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED THAT:

1. Respondents' Motion for Summary Disposition is **GRANTED** with respect to the issue of license revocation.
2. Respondents' Motion for Summary Disposition is **DENIED** in all other respects.

3. The evidentiary hearing scheduled to begin on Monday, October 7, 2013 will proceed as scheduled on all issues other than license revocation.

Dated: September 3, 2013

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

## MEMORANDUM

### I. Factual and Procedural Background

The City first issued a liquor license to Starmac, Inc. d/b/a Champions Saloon & Eatery (Champions) on September 9, 1981.<sup>1</sup> Champions' liquor license has been renewed annually by the City since it was first issued. Champions' license was renewed most recently on July 1, 2012.<sup>2</sup> Champions is located at 105 West Lake Street in Minneapolis, Minnesota.<sup>3</sup>

On January 28, 2013, the City of Minneapolis issued a Notice and Order for Hearing in the above-captioned proceeding. The Notice and Order for Hearing provides that the City has initiated an adverse license action against Champions and its owner Richard P. Nelson. The purpose of the proceeding is to determine whether good cause exists for the City to immediately revoke, refuse to renew, or otherwise take adverse action against the Class E on-sale liquor license held by Respondents.<sup>4</sup>

The Notice and Order for Hearing states that the City has initiated this action pursuant to the following charter, ordinance, and statutory provisions:

- Minneapolis Charter, Ch. 4, Sec. 5 (providing that the City has the power to make ordinances);
- Minneapolis Charter, Ch. 4, Sec. 16 (allowing for the revocation of a license for good cause);
- Minneapolis Code of Ordinances (M.C.O.) § 259.15 (providing that unpaid taxes and unpaid fines constitute grounds for denial or revocation of a license);
- M.C.O. § 259.250 (business license management responsibilities requiring, among other things that: the licensee operate the business in compliance with all applicable laws; requiring the business to provide

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<sup>1</sup> Affidavit (Aff.) of Richard P. Nelson at ¶¶ 1, 3.

<sup>2</sup> *Id.* at ¶ 3.

<sup>3</sup> *Id.* at ¶ 2.

<sup>4</sup> Notice and Order for Hearing at 1 (January 28, 2013).

adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas; requiring the business to comply with all conditions of licenses or other requirements imposed by the licensing authority);

- M.C.O. § 362.340 (revocation of licenses generally);
- M.C.O. § 362.500 (compliance with state laws);
- Minnesota Statute (Minn. Stat.) § 340A.412, Subp. 2(b) (prohibiting the granting, transfer or renewal of a liquor license where it would not be in the public interest); and
- Minn. Stat. § 340A.415 (liquor license revocation and suspension).<sup>5</sup>

The Notice and Order for Hearing also provides that the Minneapolis licensing staff has determined “that renewal of the Class E on-sale liquor license with Sunday sales held by the licensee would be contrary to the public interest, or alternatively, that good cause exists to revoke or take other appropriate adverse license action against said licensee . . . .”<sup>6</sup> The Notice and Order for Hearing goes on to list a number of incidents that allegedly occurred inside Champions or just outside Champions to show that the Respondents have failed to comply with the business management responsibilities of their liquor license as required by M.C.O. § 259.250 and to show that Respondents have failed to comply with the conditions agreed to under previous license settlement agreements. The alleged incidents include, but are not limited to: illegal drug activity; shootings; fighting; unauthorized dancing; and prostitution. The specific incidents identified in the Notice and Order for Hearing range in date from February 2006 to December 2012.<sup>7</sup>

On May 3, 2013, the City filed its First Amended Notice and Order for Hearing. The First Amended Notice and Order for Hearing added: (1) a reference to a prior case, *CUP Foods, Inc. v. City of Minneapolis*;<sup>8</sup> and (2) allegations of incidents occurring between February 3, 2013 and April 25, 2013 at or near Champions, including public intoxication, fighting, and illegal drug activity.<sup>9</sup>

On July 1, 2013, Respondents filed their Motion for Summary Disposition. The Motion requests that summary disposition be granted in favor of Respondents on the grounds that the City has not established a legal or factual basis for revocation of

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<sup>5</sup> *Id.* at 3-5.

<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.* at 7-16.

<sup>8</sup> 633 N.W.2d 557 (Minn. Ct. App. 2001).

<sup>9</sup> First Amended Notice and Order for Hearing (May 3, 2013). On July 12, 2013, the City filed its Second Amended Notice and Order for Hearing. The Second Amended Notice and Order for Hearing was filed at the same time the City filed its memorandum of law in opposition to the Respondents’ Motion for Summary Disposition. The Second Amended Notice and Order for Hearing added references to property tax delinquency on the business premises and updated criminal case dispositions associated with some of the incidents alleged to have occurred at or near Champions. Respondents’ Motion is based on the original Notice and Order for Hearing and the First Amended Notice and Order for Hearing.

Champions' liquor license. The City opposed the Respondents' motion on legal, but not factual, grounds.<sup>10</sup>

## **II. Summary Disposition Standard**

Summary disposition is the administrative equivalent of summary judgment.<sup>11</sup> Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>12</sup> A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.<sup>13</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>14</sup>

The moving party must demonstrate that no genuine issues of material fact exist.<sup>15</sup> If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.<sup>16</sup> It is not sufficient for the nonmoving party to rest on mere averments or denials. The non-moving party must present specific facts demonstrating a genuine issue for trial.<sup>17</sup> When considering a motion for summary judgment, the Judge must view the facts in the light most favorable to the non-moving party.<sup>18</sup> All doubts and factual inferences must be resolved against the moving party.<sup>19</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>20</sup>

## **III. Respondents' Motion for Summary Disposition**

Respondents' Motion for Summary Disposition addresses whether grounds exist to support revocation of Champions' liquor license. Respondents' motion does not address whether grounds exist for the City to take other licensing action such as refusing to renew the liquor license or imposing conditions on the liquor license held by Respondents. These other potential licensing actions are alternatives that the City has proposed, independent of revocation.<sup>21</sup>

In their Motion for Summary Disposition, Respondents assert that summary disposition should be granted and the case should be dismissed because: (1) the City

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<sup>10</sup> See City of Minneapolis' Response in Opposition to Respondents' Motion for Summary Disposition (filed July 12, 2013).

<sup>11</sup> Minn. R. 1400.5500(K).

<sup>12</sup> Minn. R. Civ. P. 56.03 and Minn. R. 1400.5500(K).

<sup>13</sup> *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied (Minn. Feb. 6, 1985).

<sup>14</sup> Minn. R. 1400.6600.

<sup>15</sup> *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>16</sup> *Highland Chateau*, 356 N.W.2d at 808.

<sup>17</sup> Minn. R. Civ. P. 56.05.

<sup>18</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).

<sup>19</sup> *Thiele*, 425 N.W.2d at 583.

<sup>20</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>21</sup> Notice and Order for Hearing at 1-2; First Amended Notice and Order for Hearing at 1-2.

has failed to identify a legal basis to revoke Champions' license under Minn. Stat. § 340A.415; and (2) even if the City has identified a legal basis for revocation, the facts do not support revocation.

Respondents argue that Minn. Stat. § 340A.415 sets forth the exclusive grounds for revocation of a liquor license.<sup>22</sup> That statute provides, in relevant part:

On a finding that the license or permit holder has (1) sold alcoholic beverages to another retail licensee for the purpose of resale, (2) purchased alcoholic beverages from another retail licensee for the purpose of resale, (3) conducted or permitted the conduct of gambling on the licensed premises in violation of the law, (4) failed to remove or dispose of alcoholic beverages when ordered by the commissioner to do so under section 340A.508, subdivision 3, or (5) failed to comply with an applicable statute, rule, or ordinance relating to alcoholic beverages, the commissioner or the authority issuing a retail license or permit under this chapter may revoke the license or permit, suspend the license or permit for up to 60 days, impose a civil penalty of up to \$2,000 for each violation, or impose any combination of these sanctions.<sup>23</sup>

Respondents maintain that the only ground listed in Minn. Stat. § 340A.415 for revocation that could have any application to the allegations in this case is ground (5) – the license holder has “failed to comply with an applicable statute, rule, or ordinance relating to alcoholic beverages....”<sup>24</sup> Respondents argue further that the only “statute, rule or ordinance relating to alcoholic beverages” with which Champions has failed to comply is Minn. Stat. § 340A.503, subd. 2. This statute prohibits the sale of alcohol to persons under 21 years of age. Respondents admit that Champions had a single violation of this statute in 2007, but state that Champions has passed all subsequent Youth Alcohol Compliance checks.<sup>25</sup> Respondents argue that a single violation of Minn. Stat. § 340A.503, subd. 2 in 2007, does not provide sufficient grounds to revoke Champions' liquor license.

Respondents maintain that the City is barred from relying on City charter ordinance provisions of general applicability as a basis for revoking Champions' liquor license.<sup>26</sup> In support of their position, Respondents point to a prior OAH decision that addressed a similar issue. In that case, the Administrative Law Judge concluded that the City “cannot revoke [a liquor] license on grounds other than those set forth in Minn.

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<sup>22</sup> Respondents' Motion for Summary Disposition at 4-5.

<sup>23</sup> Minn. Stat. § 340A.415 (2012).

<sup>24</sup> *Id.*; Respondents' Motion for Summary Disposition at 5.

<sup>25</sup> Aff. of Richard P. Nelson at ¶¶ 6-7.

<sup>26</sup> See, e.g., Minneapolis Charter, Ch. 4, Sec. 16 (allowing for the revocation of a City license for good cause).

Stat. § 340A.415.”<sup>27</sup> The Respondents also maintain that the Minnesota Court of Appeals has held that cities are preempted from adopting additional restrictions on liquor sales where an existing state law governs.<sup>28</sup>

Alternatively, Respondents argue that even if general City charter and ordinance provisions can serve as a valid legal basis for revocation of a liquor license, no facts exist in this case to support revocation based on those provisions. In support of its position, Respondents filed an affidavit from Richard P. Nelson, owner of Champions. Mr. Nelson stated that Champions has zero tolerance for drugs on its premises. Mr. Nelson also described Champions’ robust security program. According to Mr. Nelson, Champions has a diligent security staff and utilizes 16 security cameras monitored by management. Additionally, until a prohibition order was issued by City Inspector Matthew Clark, Champions employed off-duty police officers to provide additional security on busy nights (Wednesdays, Fridays, and Saturdays). Champions also uses a metal detection baton and driver’s license reader at its entrance, and maintains a “Trespass List” of persons prohibited from entering Champions due to past disruption or suspected drug dealing.<sup>29</sup>

Mr. Nelson also stated that in the Spring of 2011, he became concerned that the bus stop on the corner of West Lake Street and Blaisdell Avenue was being used by drug dealers and gang members. In June 2011, he raised his concern at a meeting of the Lyndale Neighborhood Association. He was told to bring the issue to the attention of Minneapolis City Council Member Meg Tuthill. He sent a detailed electronic message regarding his concerns to Ms. Tuthill and suggested that the bus stop be moved one block east to the corner of West Lake Street and Nicollet, but the City has not yet done so. Starting in the Fall of 2011 and throughout 2012, the City of Minneapolis conducted a “sting” at the West Lake Street and Blaisdell Avenue bus stop. Several individuals were arrested and charged as a result of the “sting,” but Champions did not learn the identity of those charged until the City issued a press release on March 19, 2012. After seeing the press release, Champions immediately put the names of those charged on its “Trespass List.”<sup>30</sup>

Finally, Mr. Nelson stated that Champions has never received the citation for illegal dancing on its premises that the City alleges it issued in March of 2012.<sup>31</sup> If Champions had, it would have either paid the citation or successfully challenged it.

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<sup>27</sup> *In the Matter of the On-Sale Liquor License, Class B, Held by T.J. Management of Minneapolis d/b/a Gabby’s*, Findings of Fact, Conclusions of Law, and Recommendation, OAH Docket No. 2-6010-19003-6 (November 21, 2007) at 13.

<sup>28</sup> Respondents’ Motion for Summary Disposition at 6 (citing *A/Al, Inc. v. City of Fairbault*, 569 N.W.2d 546 (Minn. Ct. App. 1997)). In *A/Al, Inc.*, the Court of Appeals ruled that the City of Fairbault could not ban sales of alcohol at liquor stores on New Year’s Day and three other holidays because the Legislature had already prescribed the particular days when sales of alcohol at liquor stores were banned and did not include New Year’s Day or the other holidays.

<sup>29</sup> Aff. of Richard P. Nelson at ¶¶1-6.

<sup>30</sup> *Id.* at ¶¶9-12.

<sup>31</sup> See *First Amended Notice and Order for Hearing* at 13.

Moreover, Champions does not allow dancing on the premises. When patrons begin dancing, Champions' personnel tell them to stop.<sup>32</sup>

Based on these facts, Respondents argue that the City has failed to demonstrate grounds for revocation of its license under Minn. Stat. § 340A.415 or under the Minneapolis charter and ordinance provisions cited by the City in its Notice and Order for Hearing, as amended.<sup>33</sup>

#### **IV. The City's Position**

The City opposes Respondents' Motion for Summary Disposition on legal grounds. First, the City maintains that Respondents position that Minn. Stat. § 340A.415 provides the exclusive grounds for liquor license revocation is erroneous. The City argues that it also has authority to revoke a liquor license based on its general authority under Minneapolis charter and ordinance provisions.<sup>34</sup> The City argues that it can exercise this authority in addition to the authority granted by Minn. Stat. § 340A.415 because Minn. Stat. § 340A.415 does not preempt the City's general authority.

The City also argues that even if it does not have authority to revoke a liquor license under its general charter and ordinance provisions, it still has the authority to revoke a liquor license for violations of M.C.O. § 259.250 because this ordinance is an "ordinance relating to alcoholic beverages" within the meaning of Minn. Stat. § 340A.415. This Minneapolis ordinance sets forth minimum standards that persons issued licenses under Titles 10, 11, 13 and 14 of the Minneapolis Code of Ordinances must meet. Title 14 of the Minneapolis Code is entitled *Liquor and Beer*. Because Title 14 regulates liquor and beer, the City maintains that a violation of M.C.O. § 259.250 is a violation of an "ordinance relating to alcoholic beverages" within the meaning of Minn. Stat. § 340A.415. Therefore, according to the City, it can revoke Respondents' liquor license for violations of this City ordinance.

Among other things, M.C.O. § 259.250 states that it "shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas."<sup>35</sup> Similarly, the ordinance requires the licensee to "take appropriate action to prevent further violations" of certain state statutes on the licensee's business premises including, but not limited to, laws prohibiting the unlawful sale or possession of controlled substances, prostitution, and nuisance activity.<sup>36</sup>

The City asserts that Champions has violated these provisions. In support of its position, the City alleges that "ongoing narcotics, and nuisance activity" have taken place at Champions and that Champions was aware of the illegal activity but failed to

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<sup>32</sup> *Id.* at ¶¶ 13-14.

<sup>33</sup> Respondents' Motion for Summary Judgment at 8-19.

<sup>34</sup> See, e.g., Minneapolis Charter, Ch. 4, § 16 (providing that the City can revoke a license issued by the City for "good cause").

<sup>35</sup> M.C.O. § 259.250(4).

<sup>36</sup> M.C.O. § 259.250(1).

take adequate steps to prevent it.<sup>37</sup> The City maintains that these allegations show that Respondents have violated M.C.O. § 259.250 and therefore the Respondents' liquor license could be revoked lawfully pursuant to Minn. Stat. § 340A.415.<sup>38</sup>

The City, however, did not file any affidavits or any other evidence to support its allegations. Instead, it relied solely on the averments in its Notice and Order for Hearing, as amended.

The City also argues that Respondents' Motion for Summary Disposition should be denied because Respondents' motion fails to address the City's recommendation for non-renewal of Champions' liquor license.<sup>39</sup> According to the City, the Respondents' license is currently up for renewal and the renewal has been held in abeyance based on this proceeding. The City asserts that the legal basis for non-renewal of a liquor license is substantially different than the burden imposed for revocation of an active license. Under Minnesota law, a city can decline to renew a liquor license if the city determines that renewal "would not be in the public interest."<sup>40</sup> Therefore, the City claims that non-renewal could be a legally appropriate action even if the City does not establish a basis for revocation.

## **V. Legal Analysis and Conclusion**

### **A. License Revocation**

As discussed above, the parties dispute the scope of the City's legal authority to revoke a liquor license. In this case, it is not necessary to resolve that legal dispute. Even under the City's interpretation of the law, Respondents are still entitled to summary disposition on the issue of license revocation.

Summary disposition is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>41</sup> Here, there is no genuine issue of material fact, and, viewing the evidence in the light most favorable to the City, there are no facts in the record that would support revocation of Respondents' liquor license.

As discussed above, the only facts in the record are those filed by Respondents with their Motion for Summary Disposition. They include the facts set forth in the affidavit of Richard P. Johnson, the owner of Champions, and the attached documents. The City did not submit any affidavits or other evidence in response to the motion. Instead, it chose to rely on the allegations in its Notice and Order for Hearing, as amended.<sup>42</sup>

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<sup>37</sup> City of Minneapolis' Response in Opposition to Respondents' Motion for Summary Disposition at 3 (emphasis in the original).

<sup>38</sup> *Id.* at 1-4.

<sup>39</sup> *Id.* at 4-6.

<sup>40</sup> Minn. Stat. §340A.412, subd. 2(b).

<sup>41</sup> Minn. R. 1400.5500(K); Minn. R. Civ. P. 56.03; Minn. R. 1400.5500 (K).

<sup>42</sup> See City of Minneapolis's Response in Opposition to Respondents' Motion for Summary Disposition.



Mere allegations in a Notice and Order for Hearing, however, are not enough to create a genuine issue of fact for trial. The rules governing summary judgment (and by extension summary disposition) are clear that when such a motion is made and supported with an affidavit, the non-moving party must present specific facts showing there is a genuine issue of material fact for trial. The non-moving party may not rest upon mere averments or denials of the adverse party's pleadings.<sup>43</sup> When the non-moving party fails to submit any facts or evidence, summary judgment shall be entered if the moving party is entitled to judgment as a matter of law.<sup>44</sup>

Because the City has failed to provide any facts in support of its position, there are no material facts in dispute. Thus, the Respondents are entitled to summary disposition on the issue of license revocation if the facts in the record fail to establish an adequate basis for license revocation.

Here, that is the case. The City seeks to revoke Champions license based on its authority under: Minneapolis Charter Chapter 4, Section 16; M.C.O. § 259.15; M.C.O. § 259.250; and Minn. Stat. § 340A.415.<sup>45</sup> The facts in the record, however, fail to support revocation based on any of these provisions as discussed below.

First, the facts in the record do not support revocation of Champions' license pursuant to Minneapolis Charter, Chapter 4, Section 16. This provision allows the City to revoke "any license issued by" the City for "good cause." The undisputed facts in the record, however, fail to establish "good cause." The facts show that Champions has zero tolerance for drugs on its premises. Champions has a diligent security staff and utilizes 16 security cameras monitored by management. Champions also uses a metal detection baton and driver's license reader at its entrance, and maintains a "Trespass List" of persons prohibited from entering Champions due to past disruption or suspected drug dealing.<sup>46</sup> The only evidence in the record of any legal violations or criminal activity is one isolated incident from 2007, when one server inadvertently served two underage men bottles of beer. Champions has passed all Youth Alcohol Compliance checks since that time.<sup>47</sup> This single incident is not sufficient to constitute good cause to revoke Champions' license, especially given that the evidence shows Champions corrected the problem and the City had renewed Champions' license every year since 2007.<sup>48</sup>

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<sup>43</sup> Minn. R. Civ. P. 56.05; see also, *J.J. Case Credit Corp. v. Foster*, 384 N.W. 2d 610, 612 (Minn. Ct. App. 1986) (holding that the trial court properly granted summary judgment for the moving party where the non-moving party failed to file affidavits or other competent evidence in response).

<sup>44</sup> *Id.*

<sup>45</sup> First Amended Notice and Order for Hearing at 1-5 (this pleading also lists other "relevant" City charter provisions, ordinances and statutes but those provisions do not provide authority to revoke a permit).

<sup>46</sup> Affidavit of Richard P. Nelson at ¶¶ 1-6.

<sup>47</sup> *Id.* at 6.

<sup>48</sup> While the City included a number of allegations of illegal conduct and nuisance activity occurring at or near Champions, in its Notice and Order for Hearing the City failed to provide any affidavits or other evidence of the claimed allegations. As a result, there is no evidence in the record to support a finding of "good cause" based on the allegations in the Notice and Order for Hearing, as amended.

Similarly, the facts in the record do not support revocation of Champions' license pursuant to M.C.O. § 259.15. This ordinance provides: "[n]o license shall be issued or maintained for operation on any premises, on which taxes, assessments or other financial claims of the city or of the state are due, delinquent or unpaid...." The City alleges that Champions failed to pay a fine for a citation issued by the City in March 2012 for unauthorized dancing on the premises. Champions denies ever receiving such a citation, and there is no evidence in the record to the contrary.<sup>49</sup> Because there is no evidence that Champions ever received a citation in 2012 or failed to pay the fine for such a citation, the record does not support revocation under M.C.O. § 259.15.<sup>50</sup>

Likewise, there are no facts to support revocation of Champions' liquor license based on M.C.O. § 259.250. As discussed above, this ordinance sets forth business management responsibilities of certain license holders, including liquor license holders. Among other things, this ordinance states that it "shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas."<sup>51</sup> Similarly, the ordinance requires the licensee to "take appropriate action to prevent further violations ... by any persons on the business premises" of specified laws, including the unlawful sale or possession of controlled substances, prostitution, and nuisance activity.<sup>52</sup>

The City alleges that the sale of drugs, loitering and disorderly conduct have occurred on Champions' business premises. The City also alleges that Champions has failed to take adequate steps to prevent further problems.<sup>53</sup> The City, however, did not file any affidavits or any other evidence to support its allegations. Instead, it relied solely on the averments in its Notice and Order for Hearing, as amended. As a result, there is no evidence in the record to support revocation on these grounds. Moreover, as discussed above, the undisputed facts show that Respondents have taken a number of steps to prevent criminal activity at Champions.<sup>54</sup> Thus, there are no facts to support revocation based on M.C.O. § 259.250.

Finally, the City seeks to revoke Champions liquor license pursuant to Minn. Stat. § 340A.415, which authorizes revocation of liquor licenses for a violation of a "statute, rule, or ordinance relating to alcoholic beverages." As discussed above, the record does not support revocation on these grounds because the only evidence in the record of any violation of any statute, rule, or ordinance is a single citation in 2007 for the unauthorized sale of alcohol to minors. This single violation alone is not sufficiently serious to warrant revocation of Champions' license given that there have not been any

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<sup>49</sup> Aff. of Richard P. Nelson at ¶ 13.

<sup>50</sup> The City could have included a copy of the alleged citation and an affidavit from a City official regarding the same in its response to the motion for summary disposition, but it chose not to do so. Thus, there are no facts to support the City's allegations and mere allegations are not sufficient to survive a motion for summary disposition.

<sup>51</sup> M.C.O. § 259.250(4).

<sup>52</sup> M.C.O. § 259.250(1).

<sup>53</sup> First Amended Notice and Order for Hearing at 7-17.

<sup>54</sup> Aff. of Richard P. Nelson at ¶¶ 4-12.

reoccurring problems since that time. Moreover, the City has renewed Champions license every year since 2007, notwithstanding this past violation.<sup>55</sup>

For these reasons, the facts in the record do not support revocation of Champions' liquor license under the charter provisions, ordinances, and statutes relied upon by the City. The City could have submitted affidavits or other evidence into the record as part of its response to the Respondents' Motion for Summary Disposition, but chose not to do so. As such, the Administrative Law Judge has no option but to grant the Respondents' Motion for Summary Disposition on the issue of license revocation.<sup>56</sup>

## **B. License Non-Renewal and Other Non-Revocation Sanctions**

As an alternative to the revocation of Champions' liquor license, the City has recommended that Champions' liquor license not be renewed.<sup>57</sup> In addition, the City is considering other "adverse license action" besides revocation and non-renewal.<sup>58</sup>

As the City correctly notes, Respondents' Motion for Summary Disposition fails to address these alternative proposed licensing actions. Thus, there is no basis upon which to grant summary disposition with regard to these alternative and independent licensing actions. The hearing will proceed as scheduled on the City's request for a determination as to whether good cause exists for the Minneapolis City Council to refuse to renew Champions' liquor license or take some other adverse licensing action, besides revocation.

**J. M. C.**

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<sup>55</sup> The City also seeks to revoke Champions' license pursuant to M.C.O. 362.340. Like Minn. Stat. § 340A.415, the provision authorizes the City to revoke a liquor license for "any violation of this chapter or the laws of the State of Minnesota relative to the sale of liquor." For the reasons explained above, the record does not support revocation pursuant to this ordinance.

<sup>56</sup> See Minn. R. 1400.5500(K); Minn. R. Civ. P. 56.05.

<sup>57</sup> First Amended Notice and Order for Hearing at 2.

<sup>58</sup> *Id.* at 17.